State of the Net - February 12 2024

05 Keynote with FCC Commissioner Brendan Carr

The Honorable Brendan Carr - Commissioner, Federal Communications Commission

Brendan Carr

So good to see so many of you here today. It's been a couple of years since I was actually at State of the Net, it's been about five years, and there's a reason why it's been a five year gap since I've been here before. So you see, the last time I was here, it was during a government shutdown, and for reasons that escape me to this day, during the shutdown, I decided to not trim my beard at all. So, I came here and spoke, there is actually still a picture of it here. I don't know if you can see this, but this is one of the most terrible and terrifying looking beards I've ever had my entire life. The thing about this, this is interesting, is that then became the main photo that was used for any story about me, or a story about the FCC. And, I gotta tell you, I never really was that into the European Right to be Forgotten law, until I started seeing that photo of me pop up everywhere. So, this year, I trimmed the beard a little bit, and hopefully, there won't be any more photos that I have to try to get scrubbed from the Internet.

But seriously, it is so wonderful to be here, happy to start out with a little bit of, consistent with the conference's theme, the State of the Net. And, as I'll get into, I think the state of the net, from the ISP layer, is actually really good. Particularly if you go back to 2017, when I voted with my FCC

colleagues to reverse the decision to apply Title II heavy handed regulations to the Internet. There was a lot of predictions, maybe some of you here made some of them about doom and gloom that will befall the Internet, when we reach that decision. I remember sort of the viral campaign that was launched right around then, in fact, you know, all these predictions about the end of the Internet. I remember very clearly, one personal story was, I got a Facebook DM from a high school ex-girlfriend, and she told me that by reversing Title II, I was about to make the second biggest mistake of my life. To be clear, I broke up with her, and neither one of those were bad decisions. They were both good decisions. And, the data actually points this up, at least on the Internet side, I'll focus there.

Since our decision to reverse Title II, speeds on the Internet, on the fixed side, are up over 3.5 fold. On the mobile wireless side, we've seen speeds increase over six-fold. Competition is up as well. The percentage of Americans with access to two or more high speed ISPs has increased by 30% since our Title II decision, and we've also seen entirely new forms of competition emerge or take hold since then, whether it's this latest generation of Low Earth Orbit satellites, the work that fixed wireless builds are doing, or even this latest move towards direct-to-cell technologies, and fixed wireless in particular is a really important emerging trend since then.

In fact, if you look at it, what were traditionally mobile wireless players are now taking some of the largest new market share when it comes to in-home broadband. And, it seems that the opposite is also true, you see cable now getting into the mobile wireless game, more so than ever before, and in many respects taking traditional mobile wireless customers at higher rates than you see mobile wireless carriers themselves doing.

Prices are also down since that decision. In real terms, in price per megabit, have also fallen substantially, and you can compare that to more heavily regulated utilities, like water and power and gas, where prices have continued to increase.

At the end of the day, I think, ultimately, COVID was the ultimate stress test of global telecom policy, and you can compare the environment we had in the US, and the results we had during COVID, with the results that took place in Europe, which historically has had a very different approach to regulation of the network. What we saw during COVID was, the regulators in Europe called up some of the largest edge providers, Netflix and others, and ask them to degrade the quality of their signal, because they were worried that the continent's networks would break, given the spike in global Internet traffic, that we were seeing as everybody's lives moved on to the Internet. And today, the data is equally as clear, the US networks are faster than in every single country in Europe, according to Ookla's data for fixed medium download speeds. US networks are

also more competitive than those in Europe, with us having nearly a two-fold, or 40 percentage point, lead when it comes to households with access to two or more wired facilities based providers, and US networks are benefiting from providers here investing three-fold as much per household than their European counterparts.

So, when you step back and look at the last couple of years, at the ISP level of the Internet ecosystem in this country, there's a lot of good to see. We've seen increasing investment, increasing speed, the digital divide narrowing. Obviously, there's always more that we can and should be doing to promote even more robust competition, and I look forward to taking some of those actions.

But, I also want to flag a couple of storm clouds on the horizon. One is spectrum. If you step back, I think the Biden administration has sort of fallen into a bit of a malaise when it comes to spectrum policy in this country, in getting spectrum out there. Freeing it up for consumers to use is not only good for efforts to get people connected, and to bridge the digital divide, but it's also good for US geopolitical leadership. At the end of the day, when we're freeing up spectrum, the eyes of the world turn to the US. Capital flows here, we get a bigger say in standards setting bodies, we get to make sure that the services that are built out on the spectrum bands are ones that are going to work for our interests.

And yet, we've sort of been moving in the wrong direction. In fact, in 2021, the FCC raked back spectrum that we'd made available previously in the 49 Ghz band that same year, and then again, in 2022, the Biden administration delayed the rollout of 5G services on C-band spectrum. In 2023, the Biden administration announced that they're not going to meet a statutory deadline for identifying spectrum that had been required for the FCC to auction just this year. And, on top of all of that, the Biden administration recently put out a National Spectrum Strategy, but that strategy fails to commit to freeing up even a single megahertz of spectrum, and this marks a real 180 from the progress that we had been making. If you step back and look at 2017 through 2020, at the FCC we freed up about 6000 Mhz of spectrum for licensed use, in addition to 1000s of additional megahertz for unlicensed use cases. And again, you contrast that to the national spectrum plan, which only says they're going to study, doesn't commit to freeing up, but just study, 2800 megahertz.

So, 6000 megahertz freed up in 2017 through 2020, and the Biden administration only plans to study a fraction of that, so I think this is one where we need to turn things around because we're falling behind. Right now, the U.S. ranks 13, out of 15 leading markets, when it comes to the availability of licensed mid-band spectrum. On average, we trail other countries by about 400

megahertz of spectrum, we trail China, in particularly, about 710 megahertz of spectrum. So, spectrum, and the lack of it, is one of the storm clouds on the horizon that we really need to come together, as a government, and turn things around.

The second piece I want to talk about in terms of storm clouds has to do with the current rollout of the BEAD funding initiative. As all of you are familiar, this plan is run out of the Commerce Department, and the idea is to make sure that every single American has access to high speed Internet services. But, we're already starting to see some issues there. When Congress passed the law that authorized BEAD, and funded BEAD, they made a very important decision, which was to proceed on a technology neutral basis, to allow a range of technologies to compete, and doing so, I think, is vital to achieving the goal of connecting every American.

But, the Commerce Department along the way has made some policy cuts that has artificially raised the cost of connecting Americans. You can see it in this very heavy thumb that they put on the scale for fiber, you can see it in some other decisions as well that have ended up raising costs, including union preferences, preferences for government-run networks. And so, while we have clearly set the goal, and allocated enough funding, to get the job done of connecting all Americans, the policy cuts are holding us back.

In fact, you're already starting to see some evidence of that. A number of states have recently raised their hand and indicated that the amount of money they're going to get from BEAD is not going to be enough to connect all unserved locations in their states. This includes places like California, New Mexico, and Minnesota. This is concerning, because, with the right policy cuts in place, BEAD was poised to get the job done. So, that's concerning to me.

But again, there's still time to correct course there. As the Commerce Department is looking at some of the state applications for using BEAD dollars, we need to move in a tech-neutral way, and that includes leaving room, at least in some cases, for fixed wireless and other technology to get the job done. Fixed wireless, in many cases, can connect Americans on pennies on the dollar, where fiber could be 6x, 12x, 18x the cost, and it can do so on a much more compressed timeline as compared to fiber. We still need to fund a tremendous amount of fiber build, it should be the lion's share of what we do with BEAD, but we need to leave room for fixed wireless, or we're going to end up in this situation where we run out of money before we get the job done, and that would be a failure.

Stepping back more broadly, I want to talk in this sort of third and, mercifully for you all, last piece of my remarks today, and share with you a bit more about my regulatory philosophy in general.

You know, one thing that I've seen in this job, and in tech policy debates in DC over the years, is that people tend to move very quickly into polar opposite corners. On the one hand, you have a group of people that will say, any amount of regulation at all is too much. On the other hand, you'll have a whole set that I don't think have ever found a regulation that they don't love. I think people reflexively sort of go into those corners. As I've approached this job, I've tried to take a different approach. I'm guided by a number of overarching policy considerations. One is looking for market power, looking for abuse of market power, looking for national security issues, looking for disability access issues. These are some of the points that I look at to help guide me when we ultimately make the decision, charged to us by Congress, of making decisions that are in the public interest.

And so, I've come out different ways. I've agreed with my colleagues on the FCC that are in the majority, that we should go beyond, for instance, the voluntary wireless resiliency efforts that were put in place by the Wheeler FCC, and impose new rules that help promote wireless resiliency. I've agreed with my colleagues in the majority, that we should adopt new rules to help bring more competition to apartment buildings, where cable providers, and other providers in some circumstances, had been locking up markets in a way that operated in an anti-competitive way.

I've obviously always also pushed back pretty sternly when I think that my colleagues have gone too far with regulation. You can see that with my dissents on digital equity, you can see it with my dissents, and probably future dissent, on Title II regulation as well. But, that's how I try to approach these issues.

I want to talk about that through the lens of two last issues. One is the censorship that we've seen taking place by social media companies. This is an area where I agree with Tim Wu and others. Social media companies have articulated this view that their decisions to discriminate or to censor against Americans, when they participate in the modern day Town Square, is beyond the reach of the government due to the First Amendment. I recently joined with my commission colleague Commissioner Simington, and we laid out our views in a law review article in Yale Law Journal that explained how the government can, entirely consistent with the First Amendment, put some guardrails in place to address the censorship that's taking place by big tech.

And finally, one last issue that I want to talk about, that I think has pretty serious anti-competitive implications. I started these remarks with talking about the competition that we're seeing in the areas directly regulated by the FCC, the mobile wireless space, and telecommunications more generally. But, increasingly, all of that competition is winnowing down to a single choke point, and it's Apple. Apple with their control over the operating system software, coupled with their control

over hardware, is creating a walled garden that is having very anti-competitive impacts on the telecom space in adjacent spaces more generally. It's an area where I know the Department of Justice and competition authorities are looking at, but I also think it's an area where the FCC has a role to play as well. One feature of that walled garden that Apple has, is something that people shorthand refer to as blue message, green message. What happens here is, when you are on an iPhone, they are necessarily degrading the text messaging service, whether it's sharing of photos between iMessage and an Android user, the photo quality is degraded, whether it's physically looking at the green bubbles that show up when you're communicating, it has actually a low contrast, it makes it difficult for people with low vision or difficulty with seeing from picking up those messages.

Again, that's sort of one feature of the broader problems that's happening with this walled garden approach, but I think this also highlights a role for the FCC. How many of you here are familiar with the issue of Beeper Mini? Raise your hands.

Beeper Mini? That's it, one? A couple. Okay.

So, quick primer. Beeper Mini was a technology that was rolled out in December of last year, that came up with a solution to the blue bubble green bubble walled garden. It enabled people on Android devices, whether Google or Samsung phones, to communicate directly with iMessage users in a blue bubble fashion, meaning there wasn't low contrast, there wasn't a degrading of photos or degrading of video. In that way, among other things in my view, it promoted accessibility and usability by people with disabilities, including having the ability to introduce more competition, which is good for everybody. This is where there's a role for the FCC.

I think the FCC should investigate Apple's conduct with respect to Beeper Mini. Subsequently, Apple made changes to iMessage to disable the functionality of beeper Mini, and I think the FCC should investigate Apple's conduct there to see if it complies with the FCC is part 14 rules. The FCC's part 14 rules, in particular 47 CFR 14.20 and 14.21, flow from a landmark Disability Rights statute called the CVAA, the Communications and Video Accessibility Act, and those provisions talk about accessibility, and how there's a provision in there expressly that says, covered providers, which includes Apple's electronic messaging service, shall not installed network features, functions, or capabilities that impede accessibility and usability. So, I think the FCC should launch an investigation, to look at whether Apple's decision to degrade the Beeper Mini functionality that was being provided, which again, encouraged accessibility and usability, was a step that violated the FCC rules in part 14. Rules that when the FCC adopted them, they analogized to Section 251, which is our core provision on interconnection. I think this is one, again, sort of small example of

the broader negative consequences that come from Apple maintaining and perpetuating a walled garden approach to technology.

But we're not just seeing it here. There's a potential to see it in the future as well, whether it's with AI as those technologies continue to roll out, or AR or VR, I think there are potentially negative consequences, if Apple perpetuates a world in which it treats its own proprietary technologies one way, and degrades the performance of competitive ones.

So, again, I think some of the broader competitive effects here are one that the DOJ should look at, that the FTC should look at, including potentially structural remedies, but there's a role for the FCC as well, whether, again, it's looking broadly at the negative impacts that come from Apple being a choke point, that can impact competition in our space, but again, more specifically here is looking at our part 14 rules and whether Apple's conduct with Beeper Mini, ultimately, violated our rules.

So, with that, I'm going to end here, hopefully try to get you guys back on schedule, a little bit. But again, I think there's more that we need to do to continue to encourage robust competition at the ISP level. But, at the main, the biggest threat to openness, into competition, in the Internet ecosystem right now, is not taking place at the ISP level. It's taking place at the edge, and I think this is an important conference to bring different people together to talk and look at these issues. So, thank you so much for having me. Hopefully won't be another five years before I'm back. Thanks so much.